

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Missouri Landowners Alliance, and	)	
Gary Mareschal,	)	
	)	
Complainants,	)	
	)	
V.	)	
	)	Case No. EC-2020-0408
Grain Belt Express Clean Line LLC, and	)	
Invenergy Transmission LLC, and	)	
Invenergy Investment Company,	)	
	)	
Respondents	)	

MOTION TO STRIKE RESPONDENTS’ “REPLY TO COMPLAINANTS’  
RESPONSE TO MOTION FOR SUMMARY DETERMINATION”

For the reasons set forth below, Complainants respectfully ask the Commission to strike the “Reply to Complainants’ Response to Motion For Summary Determination”, filed by Respondents on October 9, 2020.

1. This series of pleadings began with Respondents’ “Motion for Summary Determination”, filed on September 10, 2020, pursuant to Commission Rule 4 CSR 4240-2.117.

2. On October 7, 2020, Complainants duly filed their Response in Opposition to Respondents’ Motion for Summary Determination. This filing was submitted pursuant to that same Commission Rule.<sup>1</sup>

3. On October 9, Respondents filed the document which Complaints seek to have stricken: a Reply to Complaints’ Response in Opposition to Motion For Summary Determination.

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<sup>1</sup> Complainants mistakenly cited the earlier version of the Rules of Practice and Procedure, citing 4 CSR 240-2.117 instead of 4 CSR 4240-2.117.

4. The Commission Rule dealing with Summary Disposition, 4 CSR 4240-2.117 provides for only two pleadings to be filed: the Motion for Summary Determination, and a response in opposition to that Motion. No provision is made for a “Response” to the “Response”.

5. Supreme Court Rule 74.04 deals with Motions for Summary Judgment, and does allow for the “Reply” to the “Reply”, as well as a “Sur-reply” to the latter Reply. However, the Commission has chosen instead to provide only for the Motion for Summary Determination, and one response in opposition thereto. It is difficult to imagine that a Court would accept additional responses in Summary Judgment cases, beyond the four pleadings specifically designated in Rule 74.04.

6. In filing this latest Reply through EFIS, Respondents state that it was being submitted pursuant to Commission Rule 4 CSR 4240-2.080(13). This rule is simply one of general applicability to all Commission proceedings, and states that a party is allowed ten days in which to respond to any pleading. However, applying the rule of construction applicable to statutes, a procedural rule applicable to a specific situation would definitely prevail over one of general applicability.<sup>2</sup> Therefore, the rules specifically intended to govern the procedure for Motions for Summary Disposition would override the general rule relied upon by Respondents in filing their latest pleading.

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<sup>2</sup> *Turner v. School District of Clayton*, 318 S.W.3d 660, 671 (Mo. banc 2010) (stating that “where one statute deals with the subject in general terms and the other deals in a specific way, to the extent they conflict, the specific statute prevails over the general statute.”); *State ex rel. Cass County v. Pub. Serv. Comm.*, 259 S.W.3d 544, 551 (Mo. App. 2008) (similarly holding that “where one statute deals with a particular subject in a general way, and a second statute treats a part of the same subject in a more detailed way, the more general should give way to the more specific.”)

7. If that were not the case, then Complainants presumably have ten days in which to respond to the merits of Respondents' latest filing; and they would then have ten days to respond to Complainants' response; etc., etc.

Wherefore, for the foregoing reasons Complainants respectfully submit that the Commission Rules envision only two pleadings in matters dealing with Summary Disposition. Accordingly, Complainants respectfully ask that Respondents' "Reply to Complainants' Response to Motion for Summary Determination" be stricken.

Respectfully submitted

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Certificate of Service

I certify that a copy of the foregoing was served this 9th day of October, 2020, on all parties of record.

/s/ Paul A. Agathen